

## Internal Revenue Service

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Department of the Treasury

Washington, DC 20224

Third Party Communication: None

Date of Communication: Not Applicable

Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:CORP:6

PLR-143660-10

Date:

February 08, 2011

### Legend

Parent =

Sub =

Date A =

Date B =

Company Official =

Tax Professional =

Dear :

This letter responds to a letter dated October 15, 2010, submitted on behalf of Parent, requesting an extension of time under § 301.9100-3 of the Procedure and Administration Regulations to file an election. Parent is requesting an extension of time to file a statement under § 1.337(d)-2(c) of the Income Tax Regulations to recognize some or all of a loss upon the disposition of stock of a subsidiary (the "Election") that was required to be filed with Parent's consolidated Federal income tax return for the taxable year ended Date B. The material information submitted for consideration is summarized below.

Parent is the common parent of an affiliated group of corporations that files a consolidated Federal income tax return ("Parent Group"). Sub was wholly owned by Parent until Date A. During the taxable year ending Date B, Parent's investment in Sub became worthless within the meaning of §§ 165(g)(3) and 1.1502-80(c).

An election under § 1.337(d)-2(c) to recognize some or all of a loss upon the disposition of the stock of Sub was required to be filed with or as part of Parent Group's timely filed consolidated Federal income tax return for the year of the disposition. However, for various reasons, the Election was not filed. Subsequently, this request was submitted under § 301.9100-3 for an extension of time to file the Election.

Section 1.337(d)-2(a)(1) provides a general rule that no deduction is allowed for any loss recognized by a member of a consolidated group with respect to the disposition of stock of a subsidiary.

Section 1.337(d)-2(a)(2)(ii) provides that a disposition means any event in which gain or loss is recognized, in whole or in part.

Section 1.337(d)-2(c)(2) provides that loss is not disallowed under § 1.337(d)-2(a)(1) to the extent the taxpayer establishes that the loss is not attributable to the recognition of built-in gain on the disposition of an asset (including stock and securities).

Section 1.337(d)-2(c)(1) provides that § 1.337(d)-2(c) applies with respect to stock of a subsidiary only if a separate statement entitled "§ 1.337(d)-2(c) statement" is included with the return in accordance with § 1.337(d)-2(c)(3).

Section 1.337(d)-2(c)(3) provides that the statement required under § 1.337(d)-2(c)(1) must be included with or as part of the taxpayer's return for the year of the disposition.

In general, § 1.337(d)-2 applies with respect to dispositions on or after March 3, 2005 and before September 17, 2008. If loss is recognized because stock of a subsidiary became worthless, the disposition with respect to the stock is treated as occurring on the date the stock became worthless. Section 1.337(d)-2(g).

Section 1.1502-80T, as in effect for the year at issue, provided that stock of a member is not treated as worthless under § 165 before the stock is treated as disposed of under the principles of § 1.1502-19(c)(1)(iii).

Under § 301.9100-1(c), the Commissioner has discretion to grant a reasonable extension of time to make a regulatory election, or a statutory election (but no more than six months except in the case of a taxpayer who is abroad), under all subtitles of the Code except subtitles E, G, H, and I.

Section 301.9100-1(b) defines the term “regulatory election” as an election whose due date is prescribed by a regulation published in the Federal Register, or a revenue ruling, revenue procedure, notice, or announcement published in the Internal Revenue Bulletin. Sections 301.9100-1 through 301.9100-3 provide the standards the Commissioner will use to determine whether to grant an extension of time to make a regulatory election. Section 301.9100-1(a). Section 301.9100-2 provides automatic extensions of time for making certain elections. Section 301.9100-3 provides extensions of time for making regulatory elections that do not meet the requirements of § 301.9100-2. Requests for relief under § 301.9100-3 will be granted when the taxpayer provides evidence to establish to the satisfaction of the Commissioner that the taxpayer acted reasonably and in good faith, and that granting relief will not prejudice the interests of the government. Section 301.9100-3(a).

In this case, the time for filing the Election is fixed by the regulations (i.e., § 1.337(d)-2(c)(3)). Therefore, the Commissioner has discretionary authority under § 301.9100-3 to grant an extension of time for Parent to file the Election, provided Parent establishes that it acted reasonably and in good faith, that the requirements of §§ 301.9100-1 and 301.9100-3 are satisfied, and that granting relief will not prejudice the interests of the government.

Information, affidavits, and representations submitted by Parent, Company Official, and Tax Professional explain the circumstances that resulted in the failure to timely file the Election. The information establishes that Parent reasonably relied on a qualified tax professional who failed to make, or advise Parent to make, the Election. See § 301.9100-3(b)(1)(v).

Based on the facts and information submitted, including the affidavits submitted and the representations made, we conclude that Parent has established that it acted reasonably and in good faith in failing to timely file the Election, that the requirements of §§ 301.9100-1 and 301.9100-3 are satisfied, and that granting relief will not prejudice the interests of the government. Accordingly, provided Parent Group qualifies substantively to file the Election, we grant an extension of time under § 301.9100-3, until sixty (60) days from the date on this letter, for Parent to file the Election.

The above extension of time is conditioned on Parent Group's tax liability, if any, not being lower in the aggregate for all years to which the Election applies than it would have been if the Election had been timely made (taking into account the time value of money). We express no opinion as to Parent Group's tax liability for the years involved. A determination thereof will be made by the Director's office upon audit of the Federal income tax returns involved. Further, we express no opinion as to the Federal income tax effect, if any, if it is determined that Parent Group's tax liability is lower. Section 301.9100-3(c).

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in

this letter. In particular, we express no opinion with respect to whether Parent qualifies substantively to make the Election. Further, we express no opinion regarding whether or when Sub's stock became worthless. In addition, we express no opinion as to the tax effects or consequences of filing the Election late under the provisions of any other section of the Code or regulations, or as to the tax treatment of any conditions existing at the time of, or resulting from, filing the Election late that are not specifically set forth in the above ruling.

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination. In addition, notwithstanding that an extension is granted under § 301.9100-3 to file the Election, any penalties and interest that would otherwise be applicable continue to apply.

This ruling letter is directed only to the taxpayer who requested it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

A copy of this letter must be attached to any income tax return to which it is relevant. Alternatively, taxpayers filing their returns electronically may satisfy this requirement by attaching a statement to their return that provides the date and control number of the letter ruling.

Pursuant to a power of attorney on file with this office, a copy of this letter is being sent to your authorized representative.

Sincerely,

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Ken Cohen  
Senior Technician Reviewer, Branch 3  
Office of Associate Chief Counsel (Corporate)